UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

DAVINA HURT AND DOMINIC HILL, :

Individually and on behalf

of others similarly situated, : CASE NO. 1:12-CV-758

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Plaintiffs,

.

v. : ORDER

COMMERCE ENERGY, INC., et al.,

:

Defendants.

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

After Defendants notified this Court again about a discovery dispute involving the surveys Plaintiffs' counsel disseminated, the Court ordered Plaintiffs to produce a copy of the blank survey for *in camera* review and indicate which questions and responses had been disclosed to their experts. Plaintiffs had previously disclosed to Defendants all survey questions and responses that they shared with their expert. After the court ordered Plaintiffs to produce a copy of the blank survey for *in camera* review and indicate which questions and responses had been disclosed to their experts. Plaintiffs had previously disclosed to Defendants all survey questions and responses that

The Court denies Defendants' request that the Court compel Plaintiffs to produce the withheld and undisclosed survey questions and responses. After reviewing the survey, the Court finds that the Federal Rule of Evidence 502(a) does not apply in this situation. The rule applies only

 $[\]frac{1}{2}$ Doc. $\frac{674}{2}$.

 $[\]frac{2}{2}$ Doc. $\frac{669-1}{2}$ at Ex. 2.

Case: 1:12-cv-00758-JG Doc #: 679 Filed: 05/15/14 2 of 2. PageID #: 7445

Case No. 1:12-CV-758

Gwin, J.

in "unusual" circumstances. Here, "fairness" does not require disclosure of the undisclosed survey

questions and responses "to prevent a selective and misleading presentation of evidence to the

disadvantage of the adversary."4/ The non-disclosed questions are not directly related to the

disclosed questions and the non-disclosure will not disadvantage Defendants.

Should Defendants want more information about class members' employment, they can seek

that information through other means. They may not, however, invade the attorney-client

relationship or obtain attorney work product under the guise of Federal Rule of Evidence 502(a).

IT IS SO ORDERED.

Dated: May 15, 2014

James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE

³/ See Cooey v. Strickland, 269 F.R.D. 643, 653-54 (S.D. Ohio 2010) (citing Federal Rule of Evidence 502) advisory committee note).

 $[\]frac{4}{2}$ Id.